

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

GILBERT L. SPURLOCK,

Plaintiff,

v.

**Civil Action No. 3:09-0035
(Lead Case)**

**COLONEL DANA R. HURST and
U.S. ARMY CORPS OF ENGINEERS,**

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is the defendants' motion to dismiss asserting sovereign immunity and the doctrine of derivative jurisdiction. [Docket 130].

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On August 11, 2009, the Magistrate Judge submitted her *Proposed Findings and Recommendation* wherein she recommended that this court find that the United States, its agencies and employees are protected by sovereign immunity from the actions plaintiff instituted in the magistrate courts of West Virginia. She further recommended that this court find that the West Virginia magistrate courts lacked jurisdiction over the United States, its agencies and employees and thus the doctrine of derivative jurisdiction requires that the removed suits be dismissed for lack of subject matter jurisdiction.

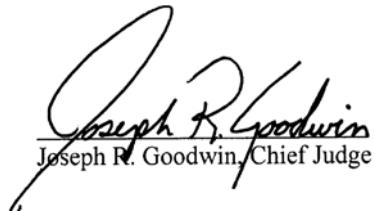
On August 18, 2009, Mr. Spurlock filed objections in the form of a “Motion of Disagreement.” First, Mr. Spurlock alleges that he never received a copy of the May 7, 2009, memorandum opinion and order denying him permission to appeal *in forma pauperis*. The docket reflects that a copy of the document was sent to Mr. Spurlock. If he wishes an additional copy to be sent to him, he may request the Clerk to do so.

Second, Mr. Spurlock asserts that I was divested of subject matter jurisdiction based upon what he asserts are pending appeals he has lodged in the United States Court of Appeals for the Fourth Circuit. It appears that the court of appeals has resolved the referenced appeals by entry of an appellate judgment order dated July 27, 2009, although this civil action is not specifically mentioned therein. The court has determined from the public records of the United States Court of Appeals for the Fourth Circuit that Mr. Spurlock has no pending appeals with that court.

Following a *de novo* review of Mr. Spurlock’s remaining objections, I conclude that they are without merit. Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge. The court **GRANTS** the defendants’ motion to dismiss, and **DISMISSES** this action from the court’s docket.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: September 11, 2009



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge